
SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-003574-22

SHAKIRA LASISI,
PLAINTIFF-APPELLANT

CIVIL ACTION
ON APPEAL FROM
SUPERIOR COURT, LAW DIVISION
SOMERSET COUNTY

V.

AON CONSULTING, INC.,
KATHY ORR, ALEXIS SCHULTZ,
MARITZA TORRES, EDA AYKIT
ABC CORPORATIONS 1-5,
DEFENDANT-RESPONDENTS

HONORABLE ROBERT BALLARD, JR
SAT BELOW

BRIEF AND APPENDIX

FOR

SHAKIRA LASISI, APPELLANT

RECEIVED
APPELLATE DIVISION

FEB 20 2024

SUPERIOR COURT
OF NEW JERSEY

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TABLE OF JUDGEMENT, ORDERS AND RULINGS BEING APPEALED

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STATEMENT OF THE CASE

Shakira Lasisi (herewith in “Plaintiff”) appeals from the judgement granting the Defendants, Aon Consulting Inc. (“Aon”), Kathy Orr, Mike Colhoun, Alexis Schultz, and Maritza Torres, (herewith in “Defendants), by and through their law firm, Littler Mendelson, P.C., their motion to dismiss Plaintiff’s complaint with prejudice by Somerset County Superior Court, pursuant to New Jersey *Rule* 4:23-5(a)(2). Plaintiff argues the order dismissing complaint with prejudice, as Defendants’ requests for interrogatories and production of documents were provided by the Plaintiff habitually, discussed multiple times, confirmed acceptance externally/off the record and resubmitted repetitively in nature. It is further argued, the trial court erred in their review of the Plaintiff’s submitted copies of the Defendants entitled, court ordered discovery requests with due dates and scheduled case management conferences, citing the Plaintiff as delinquent with the need to file a motion to vacate and reinstate pursuant to New Jersey *Rule* 4:23-5. Plaintiff satisfied all obligations through counsel and as pro-se (AP1 – AP2)¹.

Defendants on-the-record, opposing responses implied Plaintiff blatantly refused to comply with her discovery obligations The Plaintiff never requested to quash any of their subpoenas; Plaintiff found it interesting that the Defendants were fulfilling the discovery obligations for the Plaintiff when they blatantly

¹ [AP #] references brief appendix section followed by page number.

requested the information from her, causing confusion, annoyances, erratic disruptions and with extreme inconveniences to her medical providers to the point they no longer felt comfortable with medically treating the Plaintiff. The Defendants submitted subpoenas to her former employers with the exclusion of one (1) employer, demanding their attendance to discuss their case requirements and discovery demands at an offsite location (AP 3-8)².

The first submission of interrogatory answers and production of documents occurred prior to settlement conference on or about June 15, 2021, by Plaintiff's prior Counsel, McOmber, McOmber and Luber. Plaintiff reforwarded the same documents from Plaintiff's prior Counsel to the Defendants' Counsel, Littler Mendelson, P.C. with additional substantiating documents from July 13, 2022, through October 30, 2022.

Defendants' Counsel reached out to the Plaintiff on, June 9, 2022, regarding receipt of their Interrogatories and First Set of Production of Documents; on June 21, 2022, via email, Plaintiff responded affirming their discovery demands were already met by the Plaintiff and sent through her former Counsel along with an elaborative response to their Interrogatories request. On October 26, 2022, Plaintiff received an inquiry from Counsel regarding the location of "page 5" from

² One (1) employer subpoena packet is attached as an example; there were several sent out with the exclusion of Defendant's own company and her representatives.

the court stamped documents. Plaintiff informed opposing counsel; the accepted court stamped document from Plaintiff's prior counsel is a page count error.

Next, Defendants written request to their one hundred question First Set of Production Documents questionnaire and all written discovery correspondence concluded per the trial court's August court order as requested by Defendants' motion (AP 66 – AP 67).

PROCEDURAL HISTORY AND STATEMENT OF FACTS

The pertinent procedural history and statement of facts in this matter are as follows:

Plaintiff's discrimination complaint with jury demand against Aon Consulting, Inc., Kathy Orr, Mike Colhoun, Alexis Schultz, Maritza Torres, and Eda Aykit is filed on September 10, 2020.

December 22, 2020, Littler Mendelson, P.C. submits Motion to Dismiss complaint, notifications of appearance and answer with jury demand. Plaintiff's Counsel enters a stipulation of dismissal on behalf of Plaintiff against Eda Aykit on January 4, 2021; as a result, Defendants' Counsel withdraws Motion to Dismiss on January 7, 2021.

The first settlement conference for the matter was scheduled for March 30, 2021, adjourned to May 20, 2021, with the case transitioning to a Mediator without Stay. May 12, 2021, Defendants' Counsel submits adjournment request for the

May 20, 2021, settlement conference, adjournment is granted and rescheduled to May 25, 2021. The settlement conference was adjourned and rescheduled to June 2, 2021; conference was adjourned again after Defendants' Counsel submits adjournment request due to scheduling conflict. Settlement conference is rescheduled to June 15, 2021.

January 8, 2022, court notice informs the discovery period for the case will end on March 17, 2022. Pursuant to *Rule* 4:24-1(c), if additional discovery is needed, appropriate application to the court must be made. Defendants' Counsel submits their first request to extend discovery due to COVID-19 concerns; on February 2, 2022, the extension of discovery is granted based on both parties with the discovery period extended for 115 days from March 17, 2022, to July 10, 2022.

Plaintiff's Counsel enters motion to relieve counsel on March 16, 2022; motion is granted on April 1, 2022, and further ordered discovery end date is revised to November 7, 2022, allowing Plaintiff to retain new counsel within thirty (30) days to retain new counsel or proceed the matter as Pro Se. Plaintiff continues the matter as Pro Se, fulfilling Defendant's discovery requests.

On July 15, 2022, Plaintiff submit requests for settlement conference, deposition calendaring after August 1, 2022, and informs the court of her discovery submission to Defendants' Counsel to take place on August 1, 2022, instead of

November 1, 2022. The Settlement Conference is calendared for August 9, 2022, rescheduled to August 19, 2022.

Plaintiff submits motion regarding revision of discovery end date court order; subsequently, settlement conference is rescheduled again to August 22, 2022, and then cancelled by the court after Defendants' Counsel confirmed her unavailability to attend settlement conference on August 22, 2022, due to vacation.

Furthermore, after Plaintiff and Defendants' Counsel held conference call discussions, both parties submit opposing correspondence regarding Plaintiff's submission to Defendants' discovery requests. Post submissions, motion decision and oral argument are calendared for August 26, 2022, Plaintiff's August 22, 2022, settlement conference date is cancelled indefinitely. Case management conferences are calendared and commence with Plaintiff as Pro Se, September 2022.

On August 24, 2022, Defendants' Counsel submits Motion to Compel discovery for Plaintiff's medical history, ten (10) years of medical record with physician access and a new set of Health Insurance Portability and Accountability Act of 1996 (45 CFR Part 160 and Subparts A and E of Part 164, "HIPAA") authorizations, although Defendants initial HIPAA authorizations and consent were current and active. Plaintiff initiates an oppositional response, informing Defendants already had HIPAA authorizations with Plaintiff's active medical

consent being current³. Defendants' Counsel by way of conference calls, informed she was going to order the ten (10) year medical history request by way of subpoena; Defendant's motion is calendared with Plaintiff's oral argument date August 26, 2022. Court grants Defendants' Motion to Compel and the renewal HIPAA authorizations without the need of subpoenas. Defendants and Counsel orders subpoenas anyway and issues them to each listed provider outlined in Plaintiff's Interrogatories response (AP 32 – AP 38)⁴. Case management conference is calendared for November 1, 2022.

September 7, 2022, Defendants' Counsel enters Motion to Dismiss Complaint for Failure to Make Discovery. Plaintiff submits objection to Defendants' motion on September 9, 2022; decision and oral argument is calendared to be heard on September 23, 2022, via zoom, then rescheduled to October 7, 2022, due to Plaintiff's granted adjournment. Case management conference rescheduled for November 9, 2022, and oral argument rescheduled for October 20, 2022, with 5-day order issued by Defendants and granted post oral arguments (AP 43 – AP 44).

³ The Defendants HIPAA authorization requests were overbroad, seeking irrelevant material and may have been subpoenaed without HIPAA authorization(s). See *Crescenzo v. Crane*, 350 N.J. Super. 531, 796 A.2d 283 (N.J. Super. 2002)

⁴ Defendants' Counsel forwarded their discovery demand to Plaintiff upon receipt from her former and/or past physicians; attached is one example of the Defendants prepared HIPAA request packet for Plaintiff's medical record for her discrimination complaint.

Plaintiff complies with five (5) day order; submission to Defendants' Counsel commenced via email, then USPS, and with final submission to the trial court via NJ JEDS submission on October 28, 2022. Defendants' Motion to Dismiss Complaint for Failure to Make Discovery was denied on November 2, 2022, along with Plaintiff's request to amend order on November 6, 2022. Defendants' Counsel submits Motion to Dismiss Complaint for Failure to Make Discovery on December 21, 2022, with Plaintiff entering in objection on January 4, 2023; Defendants' Counsel submits reply brief on January 5, 2023, with Plaintiff objecting on January 6, 2023 (oral argument is heard on same day).

The trial court granted Defendants' Motion to Dismiss for Failure to Make Discovery on January 6, 2023, without prejudice pursuant to *Rule* 4:23-4 and 4:23-5(c) (AP 46 – AP 48). On March 15, 2023, Defendants' Counsel submits another Motion to Dismiss for Failure to Make Discovery for the same reasons with Plaintiff submitting same objections March 23, 2023, referencing the same documents to support Plaintiff has fulfilled their discovery requests; Defendants' Counsel submitted her Certification in Support of Motion on March 24, 2024

Plaintiff enters in objection to Counsel's Certification on March 27, 2023, with Defendants' Counsel immediate reply brief submitted on same day; Plaintiff immediately returned opposition reply on same day as well with Court calendaring oral arguments via zoom on April 28, 2023, from the initial date of March 15,

2023. Oral arguments were rescheduled to May 8, 2023; Plaintiff's request to have oral arguments heard on papers was granted based on her ADA Title II ("ADA") accommodation request. Defendant's Motion to Dismiss was re-granted under *Rule* 4:23-5(a)(2), however with prejudice (AP 1 – AP 2).

ISSUES & LEGAL ARGUMENTS

POINT I: TRIAL COURT ERRED DISMISSING PLAINTIFF'S COMPLAINT, PURSUANT TO *RULE* 4:23-4 AND/OR *RULE* 4:23-5(C)

Plaintiff argues the final order dismissing Plaintiff's complaint, is not pursuant to *Rule* 4:23-5(c). According to *Rule* 4:23-5(c):

(c) Motion to Compel. Prior to moving to dismiss pursuant to subparagraph (a)(1) of this rule, a party may move for an order compelling discovery demanded pursuant to R. 4:14, R. 4:18 or R. 4:19. An order granting a motion to compel shall specify the date by which compliance is required. If the delinquent party fails to comply by said date, the aggrieved party may apply for dismissal or suppression pursuant to subparagraph (a)(1) of this rule by promptly filing a motion to which the order to compel shall be annexed, supported by a certification asserting the delinquent party's failure to comply therewith.

Defendants' Counsel confirmed on August 26, 2022, they were provided with interrogatories and their production of documents request from Plaintiff's prior Counsel, prior to the June 2021 settlement conference. Defendants' Counsel

confirmed there was mutual agreement between Counsel, the discovery exchange would be limited.

Plaintiff adhered to Defendants' Counsel requests for additional substantiating documents from their First Set of Production Documents request between July 13, 2022, and July 27, 2022. Per August 26, 2022 court order, Plaintiff provided HIPAA authorizations within *Rule* 1:3-1 and *Rule* 1:3-3, written responses to First Production of Documents were mailed to the trial court and Defense Counsel on September 24, 2022 titled as *August 26, 2022 order*, and produced specific documents per Defendants' 100 page discovery questionnaire submissions took place either email, NJ JEDS, US mail solely and/or secured link either as instructed by Defendants' Counsel instruction or agreement between parties (AP 49 – AP 51; AP 68 – AP 71)⁵;

In addition, Defendants' Counsel confirmed on August 26, 2022, they were provided with interrogatories and their production of documents request from Plaintiff's prior Counsel, prior to the June 2021 settlement conference. They further confirmed there was mutual agreement between Counsel, the discovery exchange would be limited.

⁵ Documents illustrated in appendix are the documents Defendants indicate are missing, communication to the trial court and methods of submission to the Defendants and/or trial court are eclectic. Submission methods varied based on Plaintiff's mobility issues, technology challenges due to size of emailed documents via email and/or other technology issues with the NJ JEDS system.

Similarly, Plaintiff argues the final order dismissing Plaintiff's complaint, is not pursuant to *Rule 4:23-4 Failure of Party to Attend at Own Deposition*, per rule:

If a party or an officer, director, or managing agent of a party or a person designated under R. 4:14-2(c) or 4:15-1 to testify on behalf of a party fails to appear before the officer within this State who is to take his deposition, after being served with a proper notice, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (1), (2) and (3) of R. 4:23-2(b). In lieu of any order or in addition thereto the court shall require the party failing to act to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust. The failure to act described in this rule may not be excused on the grounds that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by R.4:10-3.

Defendants' Counsel did not communicate or begin coordination of Plaintiff's deposition availability for all parties until January 5, 2023 (the day before the Defendants third granted discovery extension end date). Plaintiff requested and consistently discussed deposition on occasions; specifically, March 18, 2022, July 15, 2022, October 29, 2022, and December 13, 2022 (AP 28, AP 74⁶). See *Ortiz v. Benkius*, DOCKET NO. A-3823-16T1 (App. Div. Jul. 31, 2018) Defendants' Counsel did not reply with a deposition date of January 5, 2023, until

⁶ Referenced examples of Plaintiff's deposition requests

December 13, 2022, via email; specifications of the date, time, and/or location were not provided. Plaintiff had to respectfully decline the proposed date due to disabilities, Defendants and Counsel were fully aware of. In addition, with full knowledge of the Plaintiff's disability, Counsel had six (6) months to coordinate deposition. However, they often delayed calendaring and/or diverted to a brief external settlement conference with the Plaintiff in efforts to financially weigh their settlement offer, although the approach could have convened via trial court.

Defendants did not provide any additional dates to Plaintiff or Trial Court for proper calendaring with deposition not taking place due to Defendants and Counsel lack and/or delayed response to Plaintiff's deposition notice to the court.

POINT II: TRIAL COURT ERRED BY NOT SCHEDULING DEPOSITION ACCORDING TO COURT RULES 4:14-1 and 4:14-2.

Requests for deposition to commence were requested to the trial court and Defendants' Counsel on occasions, as mentioned above. The trial court never responded, and Defendants' Counsel conducted an outreach via email, after they received their required discovery responses and with a date that proposed a medical inconvenience to the Plaintiff. Per *Rule 4:14 - Depositions Upon Oral Examination*, N.J. Ct. R. 4:14:

Except as otherwise provided by R. 4:14-9(a), after commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court,

granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of 35 days after service of the summons and complaint upon the defendant by any manner, except that leave is not required if the defendant has already served a notice of taking deposition or otherwise sought discovery. The attendance of witnesses may be compelled by subpoena as provided in R. 4:14-7. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

Defendants and their Counsel requests were outside of court rules and formality⁷; specifically *Rule 4:14 - Depositions Upon Oral Examination*, N.J. Ct. R. 4:14. Per *Rule 4:14-2*:

(a) Notice. Except as otherwise provided by R. 4:14-9(b), a party desiring to take the deposition of any person upon oral examination shall give not less than 10 days' notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition, which shall be reasonably convenient for all parties, and the name and address of each person to be examined, if known, and, if the name is not known a general description sufficient to identify the person or the particular class or group to which the person belongs. If a defendant fails to appear or answer in any civil action within the time prescribed by these rules, depositions may be taken without notice to that defendant. (b) Time. The court may for cause shown enlarge or shorten the time for taking the deposition. (c) Organizations. A party may in the notice name as the deponent a public or private corporation or a partnership or association or governmental agency and designate with reasonable particularity the matters on which examination is

⁷ Refer to AP# addressing informal deposition request.

requested. The organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf and may set forth for each person designated the matters on which testimony will be given. The persons so designated shall testify as to matters known or reasonably available to the organization.

(d) Production of Things. The notice to a party deponent may be accompanied by a request made in compliance with and in accordance with the procedure stated in R. 4:18-1 for the production of documents and tangible things at the taking of the deposition.

Although there are disputes in material facts, Plaintiff did not fail to schedule her deposition and she attended all the court calendared case management sessions. See *Demedeiros v. Brillhante*, No. A-2292-21 (App. Div. Dec. 13, 2022). Instead of Defendants and Counsel providing additional dates to Plaintiff or Trial Court for proper calendaring, they opted to submit more Motions to Dismiss when the Plaintiff respectfully declined their initial invitation due to medical reasons. Plaintiff supplied the Defendants and trial court with opposition papers that informed and showed written responses to Defendants' First Request to their one hundred question Production of Documents questionnaire and meeting all their demands. *Rule 4:23-5(c)* does not apply as Defendants' Counsel failed to cooperate

in preparation of deposition in the following manner that complicates *Rule 4:23-2(b)(3)*⁸ and *4:23-2(b)(4)*⁹.

POINT III: TRIAL COURT ERRED BY GRANTING DEFENDANTS' DISMISSAL BASED ON RULE 4:23-5(a)(2)

Beginning with the two-step dismissal process that occurred on January 6, 2023, without prejudice and again with prejudice on June 1, 2023. Plaintiff adhered to all the Defendants' requests cited in their final Motion to Dismiss; in addition, Plaintiff provided the trial court copies of her submissions to the Defendants habitual requests, responded to their habitual Motions to Dismiss, calendared phone calls, exchanged multiple emails, participated in their secure link submissions, held settlement discussions, attended to their multiple oral argument requests to reaffirm her successful submissions to all interested parties, never submitted a squash request, was transparent throughout the process and with an

⁸ "Rule 4:23-2(b)(3) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof with or without prejudice, or rendering a judgment by default against the disobedient party;" *Rule 4:23 - Failure to Make Discovery; Sanctions*, N.J. Ct. R. 4:23

⁹(4) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders.

7 continued: In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

open door policy. See *Fik-Rymarkiewicz v. Univ. of Med & Dentistry of N.J.*, 430 N.J. Super 469 (App. Div.) (affirming trial court's dismissal of complaint with prejudice where Plaintiff failed to provide fully responsive discovery), *certif. denied*, 214 N.J. 118 (2013); see also R. 4:23-5(A)(2) ("The motion to dismiss...with prejudice *shall* be granted[.]")

CONCLUSION

In conclusion, Plaintiff requests the Appellate Division to reverse the trial court's motion dismissing the Plaintiff's complaint; allowing deposition to commence as requested by Defendants. Plaintiff has abided by each court order, provided proof of her submissions to the Defendants and trial court to further the matter along, per Defendants' request. Defendants and Counsel has acknowledged deposition was not scheduled by the trial court; Plaintiff's settlement conference requests were suspended indefinitely and the scheduling request for deposition from the trial court were not acknowledged at least once from the trial court either. Calendaring deposition before the expiration of discovery deadlines are pertinent to the case and all legal cases; this alleviates the additional need to extend discovery repetitively delaying the resolution of the dispute. See *Halloran v. Stanziale*, Docket No. A-4189-15T2 (App. Div. Nov. 14, 2017). In short, Plaintiff's calendar requests were within court rules and procedures. Plaintiff was

responsive and fully satisfied the Defendants discovery request according to *Rules* 4:23-5(a)(2), *Rule* 4:23-5(c), and/or 4:23-4.

I hereby certify that the foregoing statements made by me are true. I am aware if any of the foregoing statements are willfully false, I am subject to punishment.

Respectfully submitted,

Shakira A. Lasisi